

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEJANDRO SANCHEZ,

File No. 7963
Civil Action No. 14-CV-8320

Plaintiff,

AMENDED ANSWER

-against-

KAVULICH & ASSOCIATES, P.C.,

Defendant.

-----x
Defendant Kavulich & Associates, P.C. (hereinafter referred to as either "Defendant" or "Kavulich") by way of answer to Plaintiff's complaint ("Complaint") says:

INTRODUCTION

1. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.
2. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

JURISDICTION AND VENUE

3. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.
4. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

5. Defendant admits that its office is located within the County of Westchester and denies all other factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

PARTIES

6. Defendant is without information or belief as to this Paragraph which makes allegations regarding Plaintiff's identity status and leaves Plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

7. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

8. Defendant admits that its principal place of business is located at 181 Westchester Avenue, Port Chester, New York and is engaged in the practice of law. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

9. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

10. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

FACTS

11. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

12. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

13. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

14. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

15. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

16. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

17. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

18. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

19. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

20. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

21. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

22. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

23. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

24. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

25. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

26. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

27. Defendant admits the allegations contained in this paragraph.

28. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

29. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

30. Defendant admits the allegations contained in this paragraph.

31. Defendant admits the allegations contained in this paragraph.

32. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

33. Defendant admits the allegations contained in this paragraph.

34. Defendant is without information or belief as to the truth of the allegations contained in this paragraph and leaves Plaintiff to his proofs.

35. Defendant admits the allegations contained in this paragraph only to the extent that there existed an opposition to the motion for summary judgment and that it contained an affidavit referencing “an agreement” and leaves Plaintiff to his proofs.

36. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

37. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

38. Defendant neither admits nor denies any factual allegations contained within this paragraph and leaves Plaintiff to his proofs.

39. Defendant admits the allegations contained in this paragraph.

CAUSE OF ACTION

40. Defendant repeats and incorporates by reference all responses made in the above paragraphs.

41. Denied.

42. Denied.

43. Denied.

WHEREFORE Defendant, Kavulich & Associates, P.C. hereby requests dismissal of Plaintiff's Complaint with costs and attorney's fees as allowed under the Fair Debt Collection Practices Act 15 U.S.C. § 1692k or otherwise by statute of rule of court.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim under State or Federal Statutory Law.
2. Plaintiff fails to state a claim for which relief may be sought.

3. Any damages allegedly sustained by Plaintiff were a result of actions by 3rd parties over whom Defendant has no dominion or control.
4. The Plaintiff's claims relating to events prior to November 11, 2013 are barred by 15 U.S.C § 1692k(d), the one year statute of limitations as a matter of law under the FDCPA.
5. Defendant violated no duty owed to the Plaintiff.
6. Defendant reserves the right to amend this pleading following the receipt of discovery.
7. Defendant complied with all applicable statutes regarding the collection of the underlying debt.
8. Plaintiff is not entitled to equitable relief based upon his own actions and otherwise.
9. Plaintiff did not rely on any representation made by Defendant.
10. To the extent Plaintiff claims to or did in fact rely upon any representations by Defendant, such reliance was unjustified.
11. Defendant denies the injuries and damages allegedly sustained by Plaintiff resulted from any actions by Defendant.
12. Plaintiff has suffered no damages arising from the acts of Defendant.
13. The Complaint does not describe the claims made against Defendant with sufficient particularity to enable it to determine what defenses may apply in response to Plaintiff's claims.
14. Defendant therefore reserves the right to assert all defenses which may be pertinent once the precise nature of the claims at issue is ascertained through discovery.
15. Plaintiff owed a debt to Gazi Realty, LLC.
16. In the event that Plaintiff is able to adequately plead a violation of the FDCPA, his entitlement to statutory damages is capped at \$1,000.00 per action, not per violation. See *Goodmann v. Peoples Bank, et al.*, 209 Fed. Appx. 111 (3d Cir. 2006); *Dowling v. Kucker Kraus*

& Bruh, LLP., No. 99 Civ. 11958, 2005 WL 1337442 (S.D.N.Y. 2005) *Donahue v. NFS, Inc.*, 781 F. Supp. 188 (W.D.N.Y. 1991); *Wiener v. Bloomfield*, 901 F. Supp. 771 (S.D.N.Y. 1995); *Teng v. Metropolitan Retail Recovery*, 851 F. Supp. 61 (E.D.N.Y. 1994).

Dated: Port Chester, New York
February 18, 2015

/s/ Matthew Kasper
Kauvllich & Associates, P.C.
By: Matthew Kasper, Esq.
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Port Chester, New York 10573
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **AMENDED ANSWER** was filed on February 18, 2015 via the electronic case filing system of the United States District Court for the Southern District of New York, by serving it via the same and serving it via FedEx to:

Elizabeth Shollenberger, Esq.
Schlanger & Schlanger, LLP.
343 Manville Road
Pleasantville, NY 10570

Dated: Port Chester, New York
February 18, 2015

/s/ Matthew Kasper
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